IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76- 76-1278

CHARLES ADAMS, LARRY WASHINGTON, GEORGE W. ANDREWS, BILLY LOVETT, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioners,*

v.

FEDERAL EXPRESS CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioners, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Charles Adams, Larry Washington, George Andrews and Billy Lovett, pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision and order of the United States District Court for the Western District of Tennessee is unofficially reported at 90 L.R.R.M. 2742; it is reprinted in App. A, pp. 1a-5a *infra*. The opinion of the Sixth Circuit Court of Appeals is unofficially reported at 94 L.R.R.M. 2008; it is reprinted in App. B. pp. a-*infra*. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. §§ 1331, 1337 and 45 U.S.C. § 151 *et seq.*, while the Sixth Circuit's jurisdiction was based on 28 U.S.C. §§ 1291, 1292(a).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on December 16, 1976. It is reprinted in App. C, p. 18a *infra*. This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does a labor organization engaged in an active attempt to organize the employees of an air carrier for purposes of collective bargaining under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, have standing to seek injunctive relief against the employer's interference with employee organizational rights protected by Section 2, Third and Fourth of the Act, where:

> (a) Such relief is sought by the organization on its own behalf to prevent the employer's destruction of the organizational campaign and to insure employee freedom of choice; and
>
> (b) the organization is seeking relief against violation of the statutory rights of employees who have authorized it to represent them in their employment conditions under the Act?

2. What standards must be met in order to obtain preliminary injunctive relief against pre-election carrier interference with the organizational rights of employees?

STATUTES INVOLVED

This case involves Section 2, Third and Fourth of the Railway Labor Act, 45 U.S.C. § 152, Third and Fourth. These provisions are reprinted in App. D., pp. 19a-20a *infra*.

STATEMENT OF THE CASE

1. The Factual Background

Respondent Federal Express Corp. (Carrier) is a charter air freight carrier, having its principal office at the Memphis, Tennessee Airport, where its administrative, aircraft maintenance and package sorting facilities are maintained. The Carrier specializes in providing an expedited, small-parcel cargo service between Memphis and major market areas located in some seventy cities throughout the United States. It uses a fleet of Falcon jet aircraft for intercity, interstate shipments. Pickup and delivery service within market areas is provided by a fleet of vans.[1]

Petitioner International Brotherhood of Teamsters (Union) is a labor organization, whose Airline Division attempted to organize, among others, the Carrier's mechanics and fleet service employees. Petitioners Adams, Andrews and Washington are union adherents

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[1] The Respondent is the Nation's largest air-taxi carrier of freight and the second largest carrier of mail. *Commuter Air Carrier Traffic Statistics—1975*, CAB, May, 1976, at 3. The reference "JA" used in the following paragraphs refers to the Joint Appendix in Case No. 75-2340, which Petitioners have requested the Sixth Circuit to certify to this Court. Rule 21(1).

whom the Carrier discharged during the organization campaign. Petitioner Lovett, an employee leader and union supporter, was involuntarily reassigned during the organization campaign and, following a short military leave of absence, was initially denied reemployment. (JA 82-83, 348, 328-30) He was finally rehired pursuant to the Military Selective Service Act, 50 U.S.C.A. §§ 451, 459(b).

The present dispute arose out of a campaign begun by the Union in February, 1975, to organize the Carrier's unrepresented employees. The campaign focused on the mechanics and fleet service personnel working in the package sorting facility at Memphis. At the outset of the campaign, even after Petitioner Washington's discharge, employee interest in organization was high. Most of the authorization cards which, on April 14, 1975, enabled the Union to petition the National Mediation Board for elections in the mechanic and fleet service crafts were obtained in February and early March, 1975. (JA 193) Card signers authorized the Union to represent them "in all negotiations of wages, hours and working conditions in accordance with the Railway Labor Act." (JA 420) Over 35 percent of employees in each craft signed cards. 29 C.F.R. § 1206. 2(b).

On March 10, 1975, the Carrier instructed union supporters to remove their "Go Teamster" buttons (JA 148-49), and informed Petitioner Lovett that he was being reassigned from his job as a lead mechanic to a salaried position in the Training Department. (JA 76-77) At an employee meeting on March 11, 1975, the Carrier's Vice President said that Lovett was being moved because of his union activities and would be fired if he did not accept the training position. (JA

79, 117) Petitioner Adams, a janitor, was discharged on March 12, 1975, for not obeying a Vice President's order to remove his "Go Teamster" button. (JA 61-63, 350-51) Petitioner Andrews was discharged on April 10, 1975, the day after service in this action was effected on the Carrier, purportedly for absenteeism.[2]

In addition to the conduct affecting the individual plaintiffs, various other incidents of alleged Carrier interference were litigated at the six-day preliminary injunction hearing. These included surveillance of, and interrogation concerning, employee union activities,[3] threats to close if the Union succeeded,[4] threats of retaliation against supporters[5] and promises of benefit.[6] Some of these incidents were contested by the Carrier's proof and some were not. In any event, from mid-March, 1975, the Union's campaign lost ground, as employees expressed their reluctance to talk with organizers, stopped attending union meetings and declined to sign authorization cards. (JA 190-95)

2. Proceedings Below

A. Proceedings In The District Court

Petitioners brought this action against the Carrier, alleging that it had interfered with, coerced and restrained its employees in the exercise of their organizational rights in violation of Section 2, Third and Fourth of the Railway Labor Act, 45 U.S.C. § 152. A

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[2] JA 149-53, 194-95, 259-70, 330-35, 227, 358-59, 401, 408-18.

[3] JA 69, 76, 99-104, 120, 140-46, 171, 363-65, 406.

[4] JA 104, 121-22, 395-400.

[5] JA 99-102, 104, 106-11, 227-30, 296-97, 363-64, 393-95.

[6] JA 103, 121-22, 146-48, 201-04, 287-88.

temporary restraining order against further discharges was denied. After a six-day hearing, the District Court dismissed the Union's complaint and denied the individual plaintiffs' motion for preliminary injunctive relief. In the District Court's view, the Union lacked standing to bring the suit, while the individual plaintiffs had shown "only a good possibility" of success on the merits and had not shown irreparable injury. A final judgment dismissing the Union's complaint was later entered in compliance with Rule 54 (b), Federal Rules of Civil Procedure. (App. A, p. 8a)

The District Court concluded that the Union lacked standing to bring suit against carrier interference because it had not been certified by the National Mediation Board as the representative of craft or class employees under Section 2, Ninth of the Act. 45 U.S.C. § 152, Ninth. It apparently considered immaterial whether the Union had a personal stake in the controversy, or whether it had a nexus with the Carrier's employees, because the case involved neither civil rights nor environmental issues, and "there are available plaintiffs here with a direct personal and financial interest in the outcome of this litigation." (App A, p. 3a) The District Court also read *IBT* v. *Zantop Air Transport Corp.*, 394 F.2d 36 (C.A. 6), a Section 2, Fourth case where the plaintiff union's appeal was dismissed as moot after a rival union had been certified by the NMB, as indicating the Sixth Circuit's implied agreement with the lower Court's holding that the plaintiff union lacked standing to challenge carrier interference during the organizational campaign. (App. A, p. 2a)

The individual plaintiffs were held to have standing; however, the District Court found that they failed to make the requisite showing for preliminary relief. "[T]here is only a good possibility that the plaintiffs will succeed on the merits." Also, the Court found that they had not shown irreparable injury; that a balance of harm favored the Carrier; and that the public interest would not be served by injunctive relief. It reasoned that the Carrier had not "engaged in a conscious concerted attempt" to violate the Act and had no "practice" of discharging union adherents. The Carrier did not favor the Union, the Court said, but the communication of its disfavor to employees did not warrant the extraordinary relief requested. (App. A, pp. 4a-5a)

B. Proceedings In the Court of Appeals

An appeal was taken from the District Court's final judgment of dismissal and its order denying preliminary injunctive relief. The plaintiffs' motion for an injunction pending appeal was denied by both the District Court and the Court of Appeals. On December 16, 1976, the panel of the Sixth Circuit which heard the appeal issued its opinion and judgment affirming the District Court. Since the Carrier had questioned the District Court's subject-matter jurisdiction, the panel first addressed this issue. Stating that it "would prefer to hold that the District Court has no jurisdiction," the panel nevertheless concluded, on the basis of "compelling judicial precedent," that the District Court's subject-matter jurisdiction had been properly invoked. "Unfortunately, Congress has not . . . provided [for exclusive NMB jurisdiction] with respect to those parts of the Railway Labor Act here involved

. . . ." (App. B, p. 11a) It held, however, that the District Court did not abuse its discretion in denying the individual plaintiffs preliminary relief.

In affirming the dismissal of the Union's complaint, the Sixth Circuit panel "read *Zantop* to stand implicitly for the proposition that the Railway Labor Act confers no express or implied cause of action in favor of an uncertified union." (App. B, p. 12a) In *Zantop,* the plaintiff union sought, *inter alia,* reinstatement and back pay for a discharged employee, and the Sixth Circuit held that the matter could not be considered because it involved the private statutory rights of the dischargee who was not a party to the action. Although the Court in *Zantop* did not link this aspect of its holding to the plaintiff union's uncertified status, the panel in this case viewed *Zantop* as holding "that an uncertified labor organization could not enforce such [Section 2, Third and Fourth] rights for the employees it sought to represent . . . ." (App. B, p. 11a) No distinction was drawn in this case between the Union's standing to seek general injunctive relief and its standing to pursue the individualized claims of the four employee Petitioners.

The Sixth Circuit panel stated that it was applying the criteria set forth in this Court's opinion in *Cort* v. *Ash*, 422 U.S. 66, "on the issue of whether a statute confers an implied right of action." (App. B, p. 12a)

> First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted" . . .? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? . . . Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? . . . . [*Id.* at 78. (Citations omitted.)]

While it is unknown how these criteria were actually applied to the facts of this case, the panel concluded that their application showed "that the Railway Labor Act confers no implied right of action upon an uncertified union . . . ." (App. B, p. 13a)[7]

REASONS FOR GRANTING THE WRIT

I.

The Court Below Has Decided An Important Federal Question Erroneously And In Conflict With This Court's Decisions And Well-Established "Standing" Principles

In holding that a union lacks standing to challenge carrier interference with organizational rights until it has been certified by the National Mediation Board, the Court below misapplied or ignored this Court's decisions under the Railway Labor Act, 45 U.S.C. § 152, Third & Fourth, as well as the "standing" principles announced by this Court and other Courts of Appeal. The lower Court's decision is at odds with this Court's recognition that "a primary purpose of the major revisions made in 1934 [Section 2, Fourth] was to strengthen the position of the labor organizations vis-a-vis the carriers." *IAM* v. *Street,* 367 U.S. 740, 759. This statement not only reflects industrial reality; it accords, as the decision below does not, with earlier decisions of this Court holding that a private right of action is available under the Act.

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[7] The Sixth Circuit panel took judicial notice of the fact that on January 13, 1976, the National Mediation Board certified the results of the election in the mechanic craft or class, indicating that 11 of 104 eligible employees voted for the Union. (App. B, p. 12a) The Union's petition involving the Carrier's fleet service personnel remains pending before the Board on the Carrier's question regarding the scope of the craft or class.

In *Texas & N.O. R.R.* v. *Brotherhood of Ry. Clerks,* 281 U.S. 548, the Brotherhood obtained an injunction under Section 2, Third against the railroad's continued recognition of a company-dominated association of its clerical employees, even though the railroad claimed that its recognition was based on its employees' demonstrated preference for the association. The Brotherhood had been recognized by the railroad as a result of a decision by the Railroad Labor Board (24 F.2d at 432, n. 16), created by the Transportation Act of 1920, 41 Stat. 456, 469, but the Board's decisions had no legal force beyond moral suasion. After the RLA was passed in 1926, the Brotherhood referred a contract dispute to the Board of Mediation. The railroad sharply contested the Brotherhood's right to represent its employees, and engaged in conduct coercive of its employees' right to select their own representative, including recognition of the association.

The District Court granted an injunction against the railroad's coercive conduct; upon noncompliance, a contempt citation issued. The Court of Appeals affirmed. (33 F.2d 13) This Court held unequivocally, in affirming the appellate court, that Section 2, Third's "prohibition of interference . . . in connection with the choice of representatives" is "susceptible of enforcement." 281 U.S. at 569. Of particular pertinence was its subsidiary holding that the "interest, with respect to the selection of representatives to confer with the employer in relation to contracts of service . . ." was "a property interest in the employees" sufficient to satisfy the Clayton Act's requirement for irreparable injury "to a property right, of the party

making the application," as a condition of injunctive relief. 29 U.S.C. § 52; 281 U.S. at 571.

On the facts present here, the decision of the Sixth Circuit that an uncertified union may not sue for general relief against carrier interference cannot be reconciled with *Texas & N.O.* There the Brotherhood, as to which recognition had been withdrawn, was no more "certified" than this Union Petitioner. In each case the carrier involved prevented its employees from selecting a union as their representative by unlawful interference. While the issue in *Texas & N.O.* was not expressly phrased in terms of standing, this Court's holding that the employees, as embodied by the Brotherhood in its application for injunctive relief, had suffered irreparable injury to a property interest is dispositive of the Carrier's contention that standing was lacking here. That this case was brought under Section 2, Fourth, as well as Third, does not diminish the conflict. For Section 2, Fourth simply "continued and made more explicit" the Act's prohibition against carrier interference. *Virginian Ry.* v. *System Federation No. 40,* 300 U.S. 515, 543.

Moreover, the Court below found no evidence of a legislative intent to *deny* standing to unions engaged in organizational attempts. Since Congress clearly intended Section 2, Third and Fourth, to be enforceable by private suit, and there is no indication that uncertified unions were to be excluded from the enforcement scheme, the question of who may bring suit depends on well-established principles of standing. Yet the Courts below ignored both of the Union's claims of standing: (1) that the Union had suffered actual injury by the carrier's illegal action which

threatened to, and eventually did, destroy its organizational campaign, and thereby prevented it from becoming the certified representative of the mechanic craft or class; and (2) that the Union could represent employee supporters[8] who themselves had suffered immediate or threatened injury as a result of the carrier's conduct.[9] This action by the lower Court creates a sharp conflict in principle between its holding and decisions of this Court which warrants review.

In *Allee* v. *Medrano*, 416 U.S. 802, 819 n.13, this Court held that a union, whose campaign to organize farm workers was crushed by unlawful interference which placed workers in fear of lending their support, had standing in its own right to bring suit under 42 U.S.C. § 1983. A union can act only through its supporters in an organizational campaign. Their activities are indistinguishable from its own, and it is such organizational activities that Federal law is designed to protect. These principles were ignored by the Court of Appeals' denial of the Union's right to vindicate its own injury. Also, the Court rejected

[8] Over 35 percent of employees in each craft signed authorizations enabling the Union, *inter alia*, to represent them in their wages, hours and employment conditions under the Act. 29 C.F.R. § 1206.2(b).

[9] The District Court stated erroneously: "According to the union's logic any number of unions that desire to represent defendant's employees could seek to be parties in this litigation or bring suit on their own." (App. A, p. 3a) Thus the Court did not recognize that only unions engaged in active organizational efforts, like the Petitioner here, would suffer direct injury and/or have an actual nexus with employees, and thereby satisfy the requirements for standing established by this Court. Moreover, the fact that other, or even many, persons share the same injury is an insufficient reason for denying standing. *United States* v. *SCRAP*, 412 U.S. 669, 686.

the principles of standing recently announced in *Warth* v. *Seldin*, 422 U.S. 490. There this Court indicated that, "even in the absence of injury to itself, an association may have standing solely as the representative of its members" to assert claims "that would make out a justiciable case had the members themselves brought suit." *Id.* at 511; *National Motor Freight Ass'n* v. *United States*, 372 U.S. 246.[10]

II.

The Court Below Has Decided Important Questions Of Federal Law In Derogation Of The National Labor Policy

Without timely, pre-election judicial relief preserving the right of employees to freely select a representative, there is little to prevent carriers from engaging in coercive conduct "swift and forceful enough to prevent organization of a union altogether." *Burke* v. *Compania Mexicana DeAviacion, S.A.*, 433 F.2d 1031, 1033 (C.A. 9). The lower Court's decision effectively eliminates this protection by requiring unions to prevail in the face of unremedied carrier interference and become certified as the majority representative of craft employees before seeking a judicial remedy. This result, of course, assures that the union will be

[10] The lower Court's decision in this case is also in conflict with *Chicano Police Officers Ass'n* v. *Stover*, 526 F.2d 431 (C.A. 10), vacated and remanded on other grounds, 49 L. Ed. 2d 1181, where the Tenth Circuit Court of Appeals held that a police association, not recognized or certified as the exclusive representative of police officers, had standing to challenge the police department's alleged discriminatory hiring procedures under 42 U.S.C. § 1981 on its own behalf and for the benefit of its Spanish-surnamed members. See also *Memphis Am. Fed. of Teachers, L. 2032* v. *Board of Educ.*, 534 F.2d 699, 702 (C.A. 6), which should have been dispositive of the issue of standing in this case.

unable to come to the aid of those who have embraced it, thus undermining employee confidence in the union during organization and eclipsing its chances of becoming certified. Cf. *Davis* v. *R. G. Le Tourneau, Inc.*, 340 F. Supp. 882, 884 (E.D Tex. 1971). The Court below also adopted inappropriate standards to determine the propriety of preliminary relief.

These issues are of widespread public importance because they cut across the entire spectrum of organization in the airline industry which is becoming increasingly volatile. Unlike the railroads, there were few successful attempts to organize the airlines before 1936.[11] Today a large percentage of even the principal air carriers' employees are unrepresented, due mainly to the failure to organize their giant clerical, office, stores, fleet and passenger service crafts.[12] The fast-growing commuter/air-taxi segment of the industry,[13] in which nearly 3,000 carriers participate,[14] is virtually unorganized. Only 1,764 employees are covered by certifications, and a total of 39 recorded collective bargaining agreements exist, in this field of air transportation.[15] Yet the trend is toward increased employee interest in organization, as evidenced by a tripling of the number of employees involved in NMB

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[11] *Airline Experience Under the Railway Labor Act*, U.S. Dep't of Labor, BLS Bull. 1683, 1971, at 5.

[12] NMB *Forty-First Ann. Rep't*, 83 (1975).

[13] See *Commuter Air Carrier Traffic Statistics—1975*, CAB, May, 1976, at 3.

[14] *World Aviation Directory, Spring, 1976*, No. 72, Ziff-Davis Pub. Co., § A3, at 99-209.

[15] Survey of NMB Files, Research Dep't, International B'hd of Teamsters, Feb. 16-18, 1977.

representation cases from 1966 through 1975 over the previous decade.[16]

Against this background of accelerated organization, the lower Court's decision denying standing to the "only effective adversary" of carrier interference is "anachronistic." Cf. *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237; *Drivers Local 444* v. *Winter Haven Hosp.*, 279 So.2d 23, 83 L.R.R.M. 2515, 2517 (Fla. Sup. Ct. 1973). There can be no pretense that limiting the right to sue to individual workingmen will effectuate Congress' intent that the rights established in Section 2 of the Act be enforceable. See generally *Chicago & N.W. Ry.* v. *UTU*, 402 U.S. 570. Not only do individual workers recognize the imprudence of instituting formal proceedings against their employer (*NLRB* v *Indiana & Mich. Elec. Co.*, 318 U.S. 9, 17-18), but the expense of litigation surely deters employees from asserting their rights. Cf. *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 420.[17]

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[16] During the 10-year period, 1966-75, the number of employees involved in NMB airline representation cases totalled 138,952, a startling increase over the 45,970 who were involved in such cases between 1956 and 1965. Source: *NMB Ann. Rep'ts 1956-75.*

[17] It is well established that a union need not be the certified representative of employees in order to set in motion the NLRB's unfair labor practice procedures under Section 10 of the National Labor Relations Act, 29 U.S.C. § 160. *NLRB* v. *Brashear Freight Lines, Inc.*, 119 F.2d 379 (C.A. 8). Under Section 2, Tenth of the RLA, 45 U.S.C. § 152, willful violations of Section 2, Third and Fourth, may be prosecuted as misdemeanors by a United States Attorney upon the application of "any duly designated representative of a carrier's employees." It is questionable whether, considering the Sixth Circuit's restrictive view of the Union's status here, such potential relief was available to the Union and employee Petitioners. But relief by way of criminal proceedings is not available as a practical matter. We know of

Thus it is not surprising that few reported cases have been brought by individuals under Section 2, Third and Fourth to challenge carrier interference with organizational efforts. See *Burke* v. *Compania Mexicana, supra,* 433 F.2d 1031; *Gioeni* v. *Alitalia Airlines,* 90 L.R.R.M. 2390 (S.D. N.Y. 1975); *Griffin* v. *Piedmont Aviation, Inc.,* 384 F. Supp. 1070 (N.D. Ga. 1974). These cases dealt with the discharges of individual union adherents and were heard long after each organization effort had ended unsuccessfully, and employee freedom of selection had already been defeated. In these circumstances the reinstatement and back pay relief sought by the individual plaintiffs in each case could do little to effectuate the statutory purpose.

Both lower Courts in the instant case, after denying the Union standing, concluded that the individual Petitioners had not demonstrated irreparable injury. Their conclusion is perhaps arguable, if the individual claims are viewed in isolation, because injury personal to individual employees sometimes can be remedied by eventual reinstatement and back pay awards. Compare *Sampson* v. *Murray,* 415 U.S. 61 with *BLE* v. *Missouri-Kansas-Texas R.R.,* 363 U.S. 528, 534. But the injury to employee organizational rights caused by an entire course of unlawful conduct, including discriminatory discharges, cannot be remedied after the Union's organization campaign collapses under the weight of carrier coercion. This injury is irreparable. Cf.

only two criminal prosecutions, in 1952 and 1976, which have been initiated pursuant to the Act. *United States* v. *Winston,* Crim. No. 75-CR-83, N.D. N.Y., Sept. 16, 1976; *United States* v. *Paca Airways, Inc.,* Crim. No. 24270, E.D. La., Feb. 15, 1952. In *Burke* v. *Compania Mexicana, supra,* 433 F.2d at 1034, the Ninth Circuit held that criminal proceedings are "inadequate to protect the organizational rights of the discharged employee."

Seeler v. *Trading Port, Inc.,* 517 F.2d 33 (C.A. 2); *Angle* v. *Sacks,* 382 F.2d 655 (C.A. 10). By denying the Union standing to seek general relief against interference with the selection rights of all employees, and limiting standing to individuals, the Courts below blinded themselves to the irreparable injury shown at the hearing. For when the damage to the Union, and thus to the organizational rights of all craft employees, is considered as a whole, it is clear that a sufficient showing of irreparable injury was made to warrant preliminary relief.

The failure of the lower Courts to find irreparable injury to the rights established by the Act and to the public interest underlies the Petitioners' request that this Court review the standards for preliminary relief adopted below. The District Court concluded that the individual Petitioners had shown "only a good possibility" of success on the merits and had not demonstrated irreparable injury. The Court of Appeals held that the District Court had not abused its discretion based on its view that a "strong likelihood of success" and irreparable injury, *inter alia,* must be shown. (App. B, pp. 14a-15a) This is an inappropriate standard in a case involving "a matter of public concern." *Virginian Ry.* v. *System Federation No. 40, supra,* 300 U.S. at 552. When the injury is severe and irreparable, as here, and important public statutory rights are at issue, the Court should balance these considerations against the showing of likelihood of success on the merits. Since there was a showing of sufficiently serious questions going to the merits at the preliminary hearing, and the balance of hardship was decidedly in the Petitioners' favor, an injunction should have issued in this case. See *County of Alameda* v. *Wein-*

berger, 520 F.2d 344 (C.A. 9); *American Basketball Ass'n Players Ass'n* v. *National Basketball Ass'n*, 404 F. Supp. 832 (S.D. N.Y. 1975).

Congress understood the danger of labor strife and its disruptive effect on commerce resulting from interference with organization for collective bargaining purposes. "To avoid any interruption to commerce," it chose to afford a fully enforceable right of self-organization. 45 U.S.C. § 151(a)(1), (2). The lower Court's explicit hostility to judicial enforcement of Section 2, Third and Fourth, and its effective diminishment of these important statutory rights, necessarily will force unions and their supporters to resort to self-help as the only viable means of combatting carrier interference.[18] Whatever "prudential" reasons the Court of Appeals saw to limit the availability of judicial relief here, they should not prevail over Congress' express will.

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[18] In *Southern Ry.* v. *Combs*, 484 F.2d 145 (C.A. 6), the Sixth Circuit Court of Appeals intimated that even self-help, in a representational context, is unavailable to employees covered by the Railway Labor Act. There the Sixth Circuit temporarily enjoined picketing of a rail carrier, noting that picketing can be enjoined when the parties may invoke the "conciliatory procedures" of the RLA, and referred the case to the NMB for a determination of whether the Act was applicable. The Board eventually held that it was not. *Southern Region Motor Transport, Inc.*, NMB File No. C-4244, Oct. 3, 1975.

CONCLUSION

For the foregoing reasons, this petition for certiorari to the Sixth Circuit Court of Appeals should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Civil C-75-141

CHARLES ADAMS, et al, *Plaintiffs*

v.

FEDERAL EXPRESS CORPORATION, *Defendant*

Memorandum Decision and Order

[Filed September 10, 1975]

This is a motion for a preliminary injunction filed on behalf of the plaintiffs, Charles Adams, Larry Washington, George W. Andrews, Billy Lovett and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America against the defendant Federal Express Corporation. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337 and the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*

The individual plaintiffs are all former employees of the defendant, Federal Express Corporation. The plaintiff union is a labor organization which is seeking to represent a class of employees of the defendant.

The defendant is a Delaware corporation with its principal place of business in Memphis, Tennessee and is a common carrier by air engaged in the business of providing nationwide, door-to-door transportation of air express shipments.

The individual plaintiffs, Adams, Washington and Andrews, allege that they were terminated because of their union activities while the plaintiff Lovett alleges that he was promoted and subsequently refused reemployment (after a voluntary resignation) because of his union activi-

ties, all in violation of the Railway Labor Act. Plaintiff union alleges that the defendant is engaging in a widespread and pervasive course of conduct which interferes with, influences and coerces its employees in an effort to induce them not to join the plaintiff union.

The instant controversy centers around an effort to unionize the defendant company.

The preliminary injunction is an extraordinary remedy and its grant or denial is a matter within the discretion of the trial court. The plaintiff must show that there is a probability he will succeed on the merits, that irreparable harm will result if the injunction is not granted, that the irreparable harm plaintiff will suffer is greater than the harm defendant will suffer if the injunction is granted and that the granting of the injunction is in the public interest. *See* II Wright and Miller, Federal Practice and Procedure § 2948 at 430-31 (1973).

An extensive hearing was held on this motion for a preliminary injunction. We have reviewed the transcript of the proceedings and the briefs and conclude that the plaintiffs have not made a sufficient showing for the grant of a preliminary injunction.

Before stating the reasons for the foregoing conclusion we will address the issue of the standing of the plaintiff union. The plaintiff union is not the certified representative of any class of employees of the defendant company. And while there appears to be a dearth of case law on the question of whether an uncertified labor organization has standing to sue under the Railway Labor Act, we are of the opinion that the rule in the Sixth Circuit is that they do not. The Sixth Circuit in *IBT* v. *Zantop*, 394 F.2d 36 (6th Cir. 1968) while dismissing the appeal there as moot appears to have impliedly agreed with the lower court's decision. In *Zantop* the Teamsters' Union brought suit under the Railway Labor Act against the defendant company, charging it with engaging in various acts of unlawful

conduct during the union's organizational campaign. The District Court, in an unreported decision, held "that an uncertified labor organization could not enforce such rights for the employees it sought to represent." *Zantop, supra*, at 38. Prior to the decision on appeal the National Mediation Board certified the Airline Pilots Association, International as bargaining representative of the defendant's employees. The Sixth Circuit took judicial notice of that fact and dismissed the appeal as moot. The court stated:

> This action was brought by the Teamsters to obtain judicial enforcement of employee rights to select the Teamsters as their bargaining representative. During the pendency of this appeal the underlying representational dispute has been terminated and a bargaining representative has been certified by the Board.
>
> *Zantop, supra* at 40.

The court seems to state here that since the Teamsters were not certified as the representative of the defendant's employees then they were not the proper parties to prosecute the lawsuit. It is clear from the court's holding that if the Teamsters had been certified as the representative of the defendant's employees the case would not have been rendered moot.

Plaintiff union contends, however, that it has a personal stake in the outcome of this controversy and has a nexus with the interests of the defendant's employees sufficient to establish its standing to sue. This is not a public interest civil rights case, *NAACP* v. *Alabama*, 357 U.S. 449 (1958), or environmental case, *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). There are available plaintiffs here with a direct personal and financial interest in the outcome of this litigation. According to the union's logic any number of unions that desire to represent defendant's employees could seek to be parties in this litigation or bring suit on their own.

The union directs our attention to numerous cases under the National Labor Relations Act holding that an uncertified labor organization has standing to sue. While cases under that Act are instructive in construing the Railway Labor Act, they are not controlling. Accordingly, we hold that the plaintiff, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, does not have standing to bring this lawsuit.

We have previously ruled that the individual plaintiffs have standing. *See Burke* v. *Compania Mexicana de Aviacion, S.A.*, 433 F.2d 1031 (9th Cir. 1970).

In regard to the issue of whether a preliminary injunction should be issued we initially find that there is only a good possibility that the plaintiffs will succeed on the merits. We cannot and are not saying that the plaintiffs will in fact succeed on the merits but we do state for purposes of the instant motion that from the evidence heretofore presented to the court the plaintiffs have such a possibility of success on the merits.

We are not persuaded, however, that the plaintiffs will suffer irreparable harm if we do not grant the injunction sought by plaintiffs. Nor are we persuaded that the balance of harm, if any, will be unduly on the plaintiffs. Rather it appears that the defendant will suffer irreparable harm if the injunction sought is granted. Finally we find that the public interest will not be served through granting the injunction sought by the plaintiffs.

We make these findings based on the testimony of the witnesses in open court and a careful review of the transcript. It does not appear at this point that the defendant, its agents or employees were engaged in any conscious concerted attempt to violate the provisions of the Railway Labor Act. The management admittedly was not in favor of the union and communicated that disfavor to the employees. Such action does not warrant the extraordinary

remedy sought here. And while it may appear that some or all of the individual plaintiffs were discharged because of their union activities, the company advanced legitimate plausible reasons for their discharge. The record at this point does not support a finding that the defendant has or had a practice of discharging employees that were union advocates.

Accordingly, we conclude that the motion for a preliminary injunction will be denied. It is so ORDERED.

We further conclude that the motion to dismiss the Teamsters' action heretofore held under advisement, will be granted, and the Clerk will enter a final judgment to that effect.

ENTER this 10th day of September, 1975.

/s/ BAILEY BROWN
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Civil Action File No. C-75-141

(Caption omitted in printing)

Corrected Judgment

(Filed September 10, 1975)

This action came on for consideration before the Court, Honorable Bailey Brown, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is ORDERED and ADJUDGED that in accord with the MEMORANDUM DECISION AND ORDER entered by the Court on September 10, 1975, the Complaint of Plaintiff, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA is hereby DISMISSED.

Dated at Memphis, Tennessee, this 10th day of September, 1975.

/s/ J. FRANKLIN REID
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Civil Action No. C-75-141

(Caption omitted in printing)

Order for Final Judgment Under Rule 54(b)

(Filed June 2, 1976)

Plaintiffs having moved for an express determination that there is no just reason for delay and express direction for the entry of Final Judgment in this cause as to the Court's Memorandum Decision and Order of September 10, 1975, and the Court having considered said Motion, the Court is of the opinion that the Motion is well taken as to the Order dismissing the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers as a party Plaintiff and denying preliminary injunction.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that, as to the Order dismissing the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as a party Plaintiff, and the Order denying preliminary injunction, the Court expressly determines that there is no just reason for delay and expressly directs the Clerk to enter a Final Judgment in this cause.

No such determination is made or Final Judgment entered as pertains to the relief sought by the individual Plaintiffs in this cause other than the denial of preliminary injunction.

/s/ BAILEY BROWN
Judge

HOWARD R. PAUL /s/
Attorney for the Plaintiffs

SCOTT MAY /s/
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Civil Action File No. C-75-141

(Caption omitted in printing)

Judgment

(Filed June 2, 1976)

This action came on for trial (hearing) before the Court, Honorable Bailey Brown, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is ORDERED and ADJUDGED in compliance with an order entered by the Court on June 2, 1976, this cause is DISMISSED as to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

It is further ORDERED that the preliminary injunction prayed for in this cause is denied.

Dated at Memphis, Tennessee, this 2nd day of June, 1976.

/s/ J. FRANKLIN REID
Clerk of Court

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2340

CHARLES ADAMS, ET AL., *Plaintiffs-Appellants,*

v.

FEDERAL EXPRESS CORPORATION, *Defendant-Appellee.*

APPEAL from the United States District Court
for the Western District of Tennessee.

Decided and Filed December 16, 1976.

Before PHILLIPS, *Chief Judge*, and PECK and MCCREE, *Circuit Judges.*

PHILLIPS, *Chief Judge.* This is a joint appeal by the International Brotherhood of Teamsters, Warehousemen and Helpers of America and four individual employees from a decision denying a preliminary injunction and dismissing the Teamsters as a party to the litigation. The memorandum opinion of Chief District Judge Bailey Brown is reported at 90 L.R.R.M. 2742.

The appeal presents two questions:

1. Does an uncertified labor organization have an express or implied right to maintain an action under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*? and

2. Did the District Court abuse its discretion in denying the motions for preliminary injunction in the labor dispute involved in this case?

The District Court dismissed the Teamsters' action. We affirm on authority of *IBT* v. *Zantop*, 394 F.2d 36 (6th Cir. 1968). We also affirm the judgment of the District Court in denying the motion for preliminary injunction.

I. Jurisdiction

This case centers around an effort by the Teamsters to unionize Federal Express, a chartered air freight carrier engaged in operating a parcel delivery service. As such the defendant company is a common carrier engaged in interstate commerce and subject to the provisions of the Railway Labor Act.

This action was filed by the Teamsters Union and an employee and three former employees of Federal Express alleging violation of § 2, third and fourth of the Act. These sections give the right to employees, *inter alia*, to organize and bargain collectively through representatives of their own choosing without interference by the carrier. The complaint charges that these rights were violated by the Company's threats, harassment, surveillance activities and selective discharges during the course of the organizational drive. Three individual plaintiffs, Adams, Washington and Andrews, allege that they were discharged because of their Union activities. The complaint seeks their reinstatement with back pay. Plaintiff Lovett avers that he initially was refused re-employment, after a voluntary resignation to enter the Air Force, because of his Union activities, and that he was rehired only because it was mandated by the Military Selective Service Act of 1967.[1] The plaintiff sought a preliminary injunction to restrain the company from: threatening employees with economic reprisals because of their participation in organizational activity on behalf of the Union; interrogating employees about Union activities; engaging in surveillance; and harassing employees.

Except for the fact that Federal Express is a common carrier subject to the Railway Labor Act, this proceeding would be within the exclusive jurisdiction of the National Labor Relations Board and not within the jurisdiction of a United States District Court.

[1] 50 U.S.C. §§ 451, 459(b).

We are reluctant to impose upon a District Court duties analogous to those of the National Labor Relations Board under a different statute, which are best resolved by an administrative agency rather than the judiciary. We would prefer to hold that the District Court has no jurisdiction and that exclusive jurisdiction is in the National Mediation Board. *Compare Brotherhood of Railway and Steamship Clerks* v. *United Airlines*, 325 F.2d 576 (6th Cir. 1963).

Unfortunately, Congress has not so provided with respect to those parts of the Railway Labor Act here involved. We are bound by compelling judicial precedent to hold that the District Court has jurisdiction. *Virginia Railway Co.* v. *System Federation*, 300 U.S. 515, 542-44 (1937); *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 548, 567-71 (1930); *Burke* v. *Compania Mexicana de Aviacion*, 433 F.2d 1031 (9th Cir. 1970). *See also Chicago & N.W. R. Co.* v. *Transportation Union*, 402 U.S. 570, 577-81 (1971).

II. Status of Uncertified Union

We now come to the question of whether there is a right of action, express or implied, in favor of an uncertified Union under the Act. This question is implicitly answered in the negative by the decision of this court in *I.B.T.* v. *Zantop, supra*, 394 F.2d 36 (6th Cir. 1968).

In *Zantop* the Teamsters filed an action seeking judicial relief against alleged unlawful carrier interference with the statutory rights of employees under the Railway Labor Act. The Teamsters Union was not the certified representative of the employees at the time the suit was instituted or at any time thereafter. The District Court did not question the right of employees, either individually or in concert, to obtain judicial relief for violation of their organizational rights under the statute. It held that an uncertified labor organization could not enforce such rights for the employees it sought to represent. 394 F.2d at 38. After

the decision of the District Court, the National Mediation Board certified a rival union as bargaining representative. This court dismissed the appeal as moot. The Teamsters urged that a discharged employee be reinstated with back pay. This court said:

> The Teamsters Union also requested that discharged employee Marvin Kagan be reinstated with back pay. This matter cannot be considered by this Court because it involves the private statutory rights of the discharged employee who is not a party to this action. 394 F.2d at 41.

We find no express provision in the Railway Labor Act conferring a right of action on an uncertified Union to file suit on behalf of employees it seeks to represent. Section 2, Fourth, 45 U.S.C. § 152, Fourth, provides that "Employees shall have the right to organize and bargain collectively through *representatives* of their own choosing." (Emphasis added.) Section 2, Ninth, 45 U.S.C. § 152, Ninth, authorizes the National Mediation Board to determine disputes as to who are the representatives of the employees "designated and authorized in accordance with the requirements of this Chapter" and to certify a designated Union as bargaining agent. In the present case the National Mediation Board conducted an election in which the Teamsters received only eleven votes out of 104 eligible employees. The Board found no basis for certifying the Teamsters Union as bargaining representative. The decision of the Board is made an Appendix to this opinion.

We read *Zantop* to stand implicitly for the proposition that the Railway Labor Act confers no express or implied cause of action in favor of an uncertified union.

On the issue of whether a statute confers an implied right of action, the Supreme Court in *Cort* v. *Ash*, 422 U.S. 66, 78 (1975), said:

> In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted," *Texas & Pacific R. Co.* v. *Rigsby*, 241 U.S. 33, 39 (1916) (emphasis supplied)—that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, ether to create such a remedy or to deny one? See, *e.g.*, *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U.S. 453, 458, 460 (1974) (*Amtrak*). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, *e.g.*, *Amtrak*, *supra*; *Securities Investor Protection Corp.* v. *Barbour*, 421 U.S. 412, 423 (1975); *Calhoon* v. *Harvey*, 379 U.S. 134 (1964).

Applying the foregoing factors enumerated by the Supreme Court, we conclude that the Railway Labor Act confers no implied right of action upon an uncertified union to maintain a suit on behalf of employees it seeks to represent. Accordingly, we affirm the judgment of the District Court in dismissing the action filed by the Teamsters.

III. Injunction

Finally, we consider the scope of review on appeal from the action of the District Court in denying the preliminary injunction. The granting or denial of a preliminary injunction is within the sound judical discretion of the trial court. *Virginia Railway Co.* v. *System Federation, R.E.D.*, 300 U.S. 515, 551 (1937); *Brandeis Machinery & Supply Corp.* v. *Barber-Greene Co.*, 503 F.2d 503 (6th Cir. 1974); *North Avondale Neighborhood Ass'n.* v. *Cincinnati Metropolitan Housing Authority*, 464 F.2d 486 (6th Cir. 1972); *Hornback* v. *Brotherhood of Railroad Signalmen*, 346 F.2d 161 (6th Cir. 1965). On appeal the denial of such an injunction will not be disturbed unless contrary to some rule of equity or an abuse of discretion. *United States* v. *Corrick*, 298 U.S. 435 (1936); *Nashville I-40 Steering Committee* v. *Ellington*, 387 F.2d 179 (6th Cir. 1967).

Numerous events are charged to have occurred during the organizational effort. These include alleged retaliatory transfer of plaintiff Lovett, a skilled mechanic, because of his Union activities. However, the company points out that the transfer was, in fact, a promotion. The plaintiffs contend that plaintiff Adams was fired for his vigorous Union activities, while Federal Express asserts that Adams' record of tardiness and absenteeism and his refusal to obey a direct order of a superior led to the dismissal. Further, the plaintiffs argue that Federal Express instituted an employee incentive program to dissuade its employees from unionizing. The company responds that the program was open to all employees and managers, not just the few who might be involved in the organizational dispute.

After six days of hearings in open court the District Court concluded:

> We make these findings based on the testimony of the witnesses in open court and a careful review of the transcript. It does not appear at this point that the defendant, its agents or employees were engaged in any conscious concerted attempt to violate the provisions of the Railway Labor Act. The management admittedly was not in favor of the union and communicated that disfavor to the employees. Such action does not warrant the extraordinary remedy sought here. And while it may appear that some or all of the individual plaintiffs were discharged because of their union activities, the company advanced legitimate plausible reasons for their discharge. The record at this point does not support a finding that the defendant has or had a practice of discharging employees that were union advocates.

In determining whether the District Court abused its discretion we must consider whether the plaintiffs have shown a strong likelihood of success on the merits; whether the plaintiffs have shown irreparable injury; whether the issuance of a preliminary injunction would cause substantial harm to others; and where the public interest lies. *North Avondale Neighborood Ass'n.* v. *Cincinnati Metropolitan Housing Authority, supra.*

The facts in this case are contested. For example, with respect to the firing of Larry Washington, a party plaintiff, the date of the firing is disputed as well as the reason behind it. The company claims that Washington was discharged for sleeping in the restroom and past infractions, while plaintiffs assert that his Union activities led to all of the disciplinary actions and his discharge.

Plaintiffs contend that in early March, 1975, Nelson Johnson, a Federal Express supervisor, told the employees that if a union came in, those responsible would be fired and the company would get tough with its employees. Plaintiffs also assert that another company manager, Ron Ford, told an employee that discipline would be tightened. Ford and Johnson specifically denied making any such statements.

The right of employees to organize, free from interference and coercion by their employer, is rooted in the freedom of citizens of a free society to organize for lawful purposes. *See Delaware & Hudson Railway Co.* v. *United Transportation Union,* 450 F.2d 603 (D.C. Cir. 1971). In cases such as the present one, a District Court must exercise great care to prevent the employees' right to organize from becoming illusory.

However, in view of our limited scope of review, we do not consider the merits of the case further than to determine whether the District Judge abused his discretion in denying the preliminary injunction. *Brandeis Machinery & Supply Corp.* v. *Barber-Greene Co., supra; American Federation of Musicians* v. *Stein,* 213 F.2d 679 (6th Cir.), *cert. denied,* 348 U.S. 873 (1954). Upon examination of the entire record we find no abuse of discretion.

Affirmed.

APPENDIX

NATIONAL MEDIATION BOARD
WASHINGTON, D. C. 20572

Case No. R-4565

In the matter of
REPRESENTATION OF EMPLOYEES
of
FEDERAL EXPRESS CORPORATION
Mechanics and Related Employees

Dismissal

January 13, 1976

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, Airline Division on April 14, 1975, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Mechanics and Related Employees, employees of Federal Express Corporation.

At the time application was received, these employees were not represented by any organization or individual.

The Board assigned Mediators John B. Willits and Thomas R. Roadley to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by Mediator Thomas H. Roadley who was assigned to count

the ballots in this case and attested thereon by a party observer.

Number of Employees Voting:

International Brotherhood of Teamsters, Airline Division Mechanics & Related Employees	11

Number of Employees Eligible
104

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

On the basis of the investigation and report of election which shows that less than a majority of eligible employees cast valid ballots in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed.

By order of the NATIONAL MEDIATION BOARD.

/s/ Rowland K. Quinn, Jr.
ROWLAND K. QUINN, JR.
Executive Secretary

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(Caption Omitted in Printing)

Before: PHILLIPS, *Chief Judge*, and PECK and MCCREE, *Circuit Judges*.

Judgment

(Filed December 16, 1976)

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendant-Appellee recover from Plaintiffs-Appellants the costs on appeal, as itemized below, and that execution therefor issue out of said District Court if necessary.

ENTERED BY ORDER OF THE COURT

JOHN P. HEL

Clerk

Issued as Mandate: January 18, 1977

COSTS: To be recovered by Appellee

Filing fee	$ .....
Printing	$ 502.11
Total	$ 502.11

APPENDIX D

Statutes Involved

Railway Labor Act, as amended, Section 1(a), 45 U.S.C. § 151(a); Section 2, Third, 45 U.S.C. § 152, Third; Section 2, Fourth, 45 U.S.C. § 152, Fourth; Section 2, Ninth, 45 U.S.C. § 152, Ninth; and Section 2, Tenth, 45 U.S.C. § 152, Tenth.

Section 1(a) of the Act states:

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Section 2, Third states:

> Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Section 2, Fourth states:

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions; *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Section 2, Ninth states:

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the

employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Section 2, Tenth states:

Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine or not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section,

and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.
